



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

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**North Carolina Board of Transportation
Environmental Planning and Policy Committee
Meeting Minutes for May 1, 2002**

A meeting of the Environmental Planning and Policy Committee (EPPC) was held on May 1, 2002 at 8:00 AM in the Board Room (Room 150) of the Transportation Building. Nina Szlosberg chaired the meeting. Other Board of Transportation members that attended were:

Conrad Burrell
Nancy Dunn
Doug Galyon
Frank Johnson

Cam McRae
Nina Szlosberg
Alan Thornburg
Lanny Wilson

Other attendees included:

Debbie Barbour
Charles Bruton
Bryant Bunn
Roberto Canales
Edward Dancausse
Craig Deal
Janet D'Ignazio
Ron Ferrell
Terry Gibson
Bill Gilmore
Lisa Glover
Rob Hanson
Phil Harris

Len Hill
Mike Holder
Julie Hunkins
David Hyder
Pat Ivey
Berry Jenkins
Neil Lassiter
Don Lee
Robin Little
Sharon Lipscomb
Daniel Martin
Carl McCann
Ehren Meister

Jon Nance
Sandy Nance
Ken Pace
Allen Pope
Lubin Prevatt
Jim Rand
Bill Rosser
Dave Schiller
Roger Sheats
Roy Shelton
Charles Tomlinson
Steve Wall
Ron Watson

Ms. Szlosberg called the meeting to order. After opening remarks, Ms. Szlosberg accepted a motion to approve the minutes as presented from the April 3, 2002 EPPC meeting. The motion was approved.

David Allsbrook, Deputy Chief – Construction and Maintenance provided an overview of the State Minimum Criteria (SMC) permanent rule-making process. The purpose of Mr. Allsbrook's presentation was to obtain committee approval to begin the permanent rule-making process effective May 2, 2002. Two handouts were provided: proposed changes to the temporary rules and the revised criteria.

Since the Board of Transportation (BOT) on January 10, 2002 adopted the SMC temporary rules, the following has occurred:

- The State Environmental Clearinghouse, who reviews all environmental documents, has reviewed the rules and received public and agency comments.
- From these comments, NCDOT staff has a few changes to the rules
- With these revisions in place, the State Environmental Clearinghouse approved the rules on April 30, 2002.

Changes were made to the temporary rules (approved January 2002) through coordination with the NC Department of Environment and Natural Resources (DENR) in an effort to develop proposed rules that would meet the needs of both agencies. The following changes were made:

- The term “repair” has been added to .0102(12) to more accurately characterize the intent of this section
 - Staff from the NCDOT Rail Division asked that “or future railroad development” be added to .0102(20) and that .0102(24) be deleted because it would then be redundant
 - .0102(29) was added upon DENR’s suggestion, in the place of proposed paragraph .0102(b) that was discussed in January.
 - The January 2002 version reads as follows:
“02F.0102(b) Additional actions at and below the threshold of activities at which NCEPA environmental documentation is required, not specifically listed under section (a) above, shall be minimum criteria activities, but only after the Department determines, through documentation, that the specific activity will have no adverse significant impact on the environment.”
- The section above has been deleted and replaced with the following:
- “02F.0102(29) Other activities, not specifically described above, involving maintenance or repair needed to maintain the original function of an existing project or facility without expansion or change in use; sampling, monitoring and related data-gathering activities; and minor construction or land-disturbing activities that impact less than five acres.”
- Paragraph .0103(1) was amended upon DENR’s suggestion to include reference to “surface waters such as rivers, streams and estuaries.”

Mr. Allsbrook explained one caveat of the rules. In the January 2002 temporary rules, Item (15) was the disturbance of 25 cumulative acres for a new two-lane road on new location. In order to understand the impacts associated with such an activity, NCDOT and DENR have agreed that NCDOT will collect data regarding the type of road, the length of project, and the amount of area impacted and associated with activities that are processed under Item (15). NCDOT is currently developing a database to gather this information to assess the severity of impact these projects have on the environment. In five years, we will review Item (15) again using the data that is collected.

Ms. Szlosberg asked Mr. Allsbrook to explain in more detail the specific concerns that DENR had regarding Item (15). Initially, DENR requested that NCDOT delete Item (15) in its entirety. NCDOT explained that the department often constructs the type of roads covered by Item (15) in order to provide access in a quick manner to industrial sites that bring economic development to the area. These short roads are also used to provide

access to school campuses. Mr. Allsbrook commented that DENR acknowledges the responsibility for NCDOT to move quickly to provide these types of roads if the project is not environmentally damaging. DENR did, however, have questions as to how frequently Item (15) is used. This is why NCDOT agreed to gather data so that Item (15) can be reviewed in the future. Ms. Szlosberg asked why NCDOT doesn't use the State Environmental Assessment/Finding of No Significant Impact (SEA/FONSI) documentation for this type of projects. Mr. Allsbrook responded that NCDOT can use the SEA as a means of documentation. In fact, NCDOT may need to do a SEA if a project is shown to have environmental impacts that exceed those thresholds outlined in the SMC. However, this type of documentation may take 1.5 to 2 years to complete and may not be appropriate for time-sensitive projects with minimal environmental impacts that so meet the SMC. The SMC expedites the process provided NCDOT's thorough review of the project demonstrates the project is not environmentally damaging.

Frank Johnson asked Mr. Allsbrook to define "cumulative" as it relates to Item (15). Mr. Allsbrook responded that the maximum amount of ground disturbance – the "footprint" of a project – is limited to a total of 25 acres. Mr. Johnson wanted clarification that "cumulative" doesn't mean the total area affected by the project that may also lie outside of the right of way. He also wanted to be sure DENR had a similar understanding of the word "cumulative." Lisa Glover, Attorney General General's Office, noted that the specific wording states "25 acres of ground surface" and should provide clarity around that issue.

Mr. Allsbrook described the course of action if the EPPC and BOT approve a motion to begin the permanent rule-making process. First, NCDOT would receive public comments for a period of 30 days. In addition, public hearings will be held to gather comments. NCDOT staff would then review the comments and revise the proposed rules to appropriately reflect the comments received. The revised rules would be presented to the EPPC and the BOT who must then vote to adopt the permanent rules before they can be sent to the Rules Review Commission. Following approval by the Rules Review Commission, the rules would be permanent. The proposed earliest effective date for the rules is April 1, 2003.

Ms. Szlosberg noted that one of the concerns expressed to her is that NCDOT should be very careful about the use of Item (15) since we arrived at this document through collaboration with partners at DENR and in the spirit of trust. She cautioned that the Department should use this rule sparingly and be careful not to stretch the rules. Mr. Allsbrook emphasized that it is NCDOT's intent to use Item (15) in an appropriate manner and that we will gather data for future evaluation of Item (15), as described previously. In fact, NCDOT anticipates that the Roadside Environmental Unit will gather some data from the Division Engineers and Division Environmental Officers by late this fall.

Mr. Allsbrook referred the EPPC to the schedule of events for the permanent rule-making. Key dates include:

- approval by the BOT to begin permanent rule-making on May 2, 2002
- two public hearings in Raleigh on June 25, 2002
- a 30-day public comment period that ends July 5, 2002
- final BOT approval of final rules on July 11, 2002
- earliest effective date of rules – April 1, 2003

Ms. Szlosberg asked if there is a reason all of the public hearings are being held in Raleigh. She raised concern about the long distances that people would have to travel if they came from the far reaches of eastern and western

North Carolina. Mr. Allsbrook said he would look into having a few meetings across the state. Nancy Dunn raised a question about cost and whether it would be worth it if there was not a good response from the previous hearings on the temporary rules. Mr. Allsbrook indicated that to date, he had not received any requests for public hearings in other locations.

A motion was made and passed by the EPPC to begin the permanent rule-making process.

Ms. Szlosberg recognized Ron Ferrell, Program Manager for the Wetlands Restoration Program (WRP) at DENR and thanked him for coming to the EPPC meeting.

Roger Sheats, Deputy Secretary for Planning, Environment and Local Government Affairs, provided an update on the permit and mitigation process improvements. Mr. Sheats described the process improvement workshops that occurred last summer and fall regarding the permit and mitigation processes. These workshops were week-long “sequestered” sessions that involved NCDOT, DENR, the US Army Corps of Engineers (USACE) and other environmental resource agencies. At the permitting workshop, the total time for project development was reduced by about 2 years by re-sequencing certain steps in the process. During that workshop, mitigation “popped out” as an issue that needed to be addressed in a separate workshop. A series of interagency workshops were held in the fall to address the mitigation process. The results of the mitigation workshop were the focus of Mr. Sheats’ presentation.

The Ecosystem Enhancement Program (EEP) is a concept developed at the workshop that will enable NCDOT to better address its mitigation needs within three years (by January 1, 2005). NCDOT is required to first avoid impacts to wetlands, minimize impacts to those wetlands that cannot be avoided, and then mitigate for the unavoidable losses. During the transition period to the EEP, there will be two groups that will guide its development. The first group will be advisory and guide the policy and structure of the EEP development while the second group will ensure that good science is being applied to the program’s development. The USACE and DENR support the EEP as it relates to their permitting authority, and NCDOT supports the program because NCDOT’s ability to deliver the transportation program relies heavily on our ability to produce mitigation.

Nancy Dunn asked about the composition of the committees. The Advisory Group would be made up of NCDOT, DENR, USACE, private bankers, conservation and preservation groups, and representatives from business and industry (roughly about 12-15 members).

Features of the EEP include:

- Up-front mitigation will be in place for projects before the impacts are incurred
- Possible groupings of hydrologic units (HU’s) rather than mitigation within the HU in which impacts occur
- Extensive monitoring to ensure that it lives up to our expectations; accountability must be built into the program to maintain credibility
- Structured to meet all of NCDOT’s compliance obligations for our transportation program
- Large preservation component
- Replacement of wetlands, streams and habitats
- Shift from geographic concerns to functional units (replacement of functions rather than acres of specific wetland types or linear feet of stream)

Staffing for the EEP will initially be composed of NCDOT and WRP staff. In the future, the EEP may develop into a separate entity. NCDOT, DENR, and the USACE are currently working on a Memorandum of Agreement (MOA) to set forth the EEP. The intention is to have the MOA in place prior to Colonel Delony's retirement from the USACE in June 2002, as Colonel DeLony has been very supportive of this effort.

Alan Thornburg asked if the EEP provides opportunities for involvement by the private bankers and whether it addresses their concerns. Mr. Sheats stated that he is very committed that this new program be a level playing field for all mitigation providers. A standard will be set that everyone must abide by – a concern previously raised by the private bankers. Mr. Sheats has met with the private mitigation bankers and briefed them about the EEP concept. He commented that the bankers generally are supportive, but they would like more information. Mr. Sheats further added that in the future, the EEP may also be used by private developers as a way of mitigating their impacts. Mr. Thornburg asked if the WRP would no longer have exclusive rights to developing mitigation in specific areas. Roger responded that this concept is an “urban legend” and a perception but not a fact.

Ms. Szlosberg asked for more information about coupling the HU's. Mr. Sheats indicated that Virginia uses this approach and has requested more information. Conceptually, the project impacts that occur within a specific HU could be mitigated by spreading mitigation credits over neighboring HU's provided that it addresses critical watershed needs. He and Dempsey Benton, Chief Deputy Secretary of DENR, are currently having discussions about this concept.

Mr. Cam McRae requested additional information on the EEP. Mr. Sheats said he would provide the BOT members with information by Thursday, May 2, 2002.

Nina Szlosberg reiterated that the EEP is only at the conceptual level and there is tremendous opportunity for input into the program. Mr. Sheats stated that during the next three-year transition period, the EEP will be under development and the BOT will have plenty of opportunity to put their mark on it. He closed by stating that this is an incredible opportunity for the State of North Carolina.

Ms. Szlosberg led a discussion with the committee on the goals, accomplishments, and future activities of the EPPC. A handout was provided that matched the accomplishments of the EPPC as they relate to the committee's mission statement and goals. She requested input from the committee on what topics or issues they would like to work on in the future.

Nancy Dunn asked to hear from the staff about how the committee can be more helpful and supportive to staff. Ms. Szlosberg suggested that the staff could be surveyed on issues that should be brought before the committee.

Frank Johnson stated that funds need to be made available to Metropolitan Planning Organizations (MPO's) to develop data and air quality models. He also suggested the possible pairing of MPO's with Rural Planning Organizations (RPO's) for partnerships in developing regional air quality models in the future. Currently, no air quality modeling is required by RPO's. Ms. Szlosberg commented that North Carolina has three cities at the top of the list for some of the worst air quality (ozone) in the United States – Raleigh, Charlotte, Triad areas. She added that an Air Quality Summit will take place next week in Charlotte, NC.

Ms. Szlosberg suggested the committee learn more about context sensitive design and how it helps us to better meet the needs of our customers.

Alan Thornburg requested that the committee look at the issue of expanding the existing roads versus shifting the traffic to secondary roads (which would then need to be improved). He would like more information on the air quality and environmental impacts of one versus the other. Mr. Cam McRae stated that they have the same issues in the eastern part of North Carolina as it relates to induced congestion.

The committee discussed the importance of educating the public on various issues associated with transportation and the environment and the need to bring people into the project development process early. This way, there is more buy-in and support and the public has more of an opportunity to shape the projects to better meet the needs of their communities.

Nancy Dunn stated that she was very impressed with the signalization plan that the BOT approved several months ago. She noted that the plan had positive environmental impacts associated with it. Ms. Dunn asked that the staff report on other “big bang for the buck” initiatives that may have positive environmental impacts such that the committee can support them. Ms. Szlosberg suggested that this be included in the poling of the staff.

The next meeting for the Environmental Planning and Policy Committee is scheduled for Wednesday, June 5, 2002 at 8:00 AM in the Board Room (Room 150) of the Transportation Building.

NS/jh